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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,785	02/08/2002	Firouzeh Keshmiri	053182-9007-00	2939

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EXAMINER

GLESSNER, BRIAN E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/072,785

Applicant(s)

KESHMIRI, FIROUZEH

Examiner

Brian E. Glessner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 30 January 2004 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

### **DETAILED ACTION**

1. The following office action is in response to the amendment and RCE filed on January 30, 2004. Claims 1-3 and 10 are pending in the application. Claims 1-3 and 10 are rejected as set forth below. The drawing correction filed on January 30, 2004 is also acceptable.

#### ***Claim Objections***

2. Claims 1, 3, and 10 are objected to because of the following informalities: Claims 1, 3, and 10 recite the limitation "driving a nail or screw through...". This limitation implies a method step. This limitation is acceptable in method claims, but claims 1, 3, and 10 are apparatus claims. The claim would read better if it stated that a nail or screw is inserted or placed through.... Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

3. Claims 1-3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell, Jr. (3,495,371) in view of Fu et al. (5,494,513).

In regard to claims 1, 3, and 10, Mitchell discloses a frame assembly (figures 7 and 12) for use in construction of a building, the frame assembly is capable of supporting a load, the frame assembly comprising a pair of elongated linear structural members 14' (i.e. first and second members) positioned in spaced apart relationship, at least one elongate linear structural member 16' (i.e. a plurality of elongate parallel members 16' having first and second ends) extending between the spaced apart pair of elongated linear structural members, the first ends of the plurality of members are attached to the first spaced apart member with nails 52 passing through the members and the second ends of the plurality of members are attached to the second spaced apart member with nails 52 passing through the members. The elongate linear structural

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members are comprised of non-laminated cellular concrete. Mitchell does not specifically disclose that said non-laminated cellular concrete is fiber reinforced. Fu teaches that it is known to make construction elements out of lightweight/cellular concrete products (abstract and column 1, lines 14-23). Fu also teaches the use of fiber reinforcement at column 4, lines 29-31 and column 7, last paragraph. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use fiber reinforced cellular concrete for Mitchell's elements, because by using fiber reinforcing, the elements will be stronger and will be less susceptible to cracking, as taught by Fu, column 4, lines 29-31. Further, Mitchell even discloses that the concrete be cellular concrete or other lightweight mixes, column 1, lines 50-51. Therefore, Mitchell even teaches or suggests the use of other known lightweight concrete mixes. The examiner would like to point out that Mitchell does not specifically state that he "drives" his nail or screw through the members. However, the examiner would like to point out that the applicant is claiming the apparatus and not the method in claims 1, 3, and 10. Therefore, the examiner only has to find the finished product. The examiner is not concerned with how the nail was put in place, but only that the nail is in place in the finished product. Therefore, since Mitchell discloses a nail in the final product, the claimed limitations are met.

In regard to claim 2, Mitchell discloses a method for constructing a building using non-wood construction products comprising the steps of constructing planar frame sections from elongated cellular concrete elements, said frame sections having the same limitations as set forth in claims 1, 3, and 10, and fastening a first planar frame section to a second planar frame section such that the plane of the first frame section is substantially perpendicular to the plane of the second frame section, figure 12. The structural limitations of claim 2 are rejected on the same

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grounds of rejection set forth above with respect to claims 1, 3, and 10. Mitchell does not specifically disclose that he “drives” his nail through the members. It would have been obvious to one having ordinary skill in the art to use a hammer to drive the nails into place in the members, because spikes and/or nails are often driven into place with a hammer. Further, one having ordinary skill in the art is capable of determining the best mode for placing the nails into the members of Mitchell’s invention.

***Response to Arguments***

4. Applicant’s arguments with respect to claims 1-3 and 10 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant’s disclosure. Peterson, Patton, Birdsey, Burson, Eldridge, and Scott.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031. The examiner can normally be reached on Monday-Friday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Carl D. Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

B.G.

February 18, 2004

A handwritten signature in cursive script, appearing to read "Brian Glessner", with a long horizontal flourish extending to the right.

**BRIAN E. GLESSNER**  
**PRIMARY EXAMINER**